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THE RELATION OF ENGLISH LAW TO INTERNATIONAL LAW

By WILLIAM S. HOLDSWORTH*

I HAVE dealt with the early history of this topic in the tenth volume of my History of English Law. I need not, therefore, do more than summarize what I have there written as a preliminary to a discussion of the modern English law on this topic.

In the sixteenth and seventeenth centuries this question had not begun to be considered by the common lawyers. The rules of international law were regarded as matters which concerned the Crown, and fell within its wide prerogative in relation to foreign affairs.¹ But after the Revolution it was necessary to reconcile this wide prerogative with the principles of English constitutional law which had prevailed as the result of the Revolution. One of these principles was that the prerogative could not be used in any way which conflicted with those principles. This restriction on the prerogative of the Crown in relation to foreign affairs is recognised at the present day, and has affected the development and the content of some of its branches—notably the treaty-making power. It also affected this question of the relation of English to international law, since the judges, if asked to give effect to a rule of international law, might be obliged to consider whether it conflicted with a rule of English law by which they were bound.

The episode of the arrest of the Czar's ambassador in 1708 raised this question of the relation of the rules of international law to the common law.² The particular question at issue—the

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¹10 Holdsworth, History of English Law (1938) 369-370.

²10 Holdsworth, History of English Law (1938) 370-373.

immunity of ambassadors—was settled by statute. But it is clear from cases arising later in the century, which turned upon the construction of this statute, that this episode had led many of the judges to consider the whole question of the relation of English law to international law; and that the trend of legal opinion was moving in the direction of asserting the broad principle that international law is part of the law of England.³ It would, I think, have been admitted that, if a statute or a rule of the common law conflicted with a rule of international law, an English judge must decide in accordance with the statute or the rule of the common law.⁴ But, if English law was silent, it was the opinion of both Lord Mansfield and Blackstone that a settled rule of international law must be considered to be part of English law, and enforced as such.

During the late eighteenth and in the nineteenth centuries this view of the relation of English to international law continued to be held by many distinguished lawyers. In 1792, Serjeant Hill's opinion in favour of the Crown's power to extradite criminals, was partly grounded upon this view.⁵ He thought that there was a rule of international law that a sovereign ought to extradite criminals, and that therefore the Crown must possess this power. In 1805 Lord Eldon, in the case of *Dolder v. Huntingfield*,⁶ lays it down, in effect, that where a question is not concluded by a rule of English law, and is one to which international law applies, the courts must apply the principles of international law. The question at issue in that case was whether stock vested in trustees for the Swiss government could be claimed by a new Swiss government, which had, by a revolution, superseded by the old government, though the new government had not been recognized by England. This he said was "a question to be discussed upon great principles of the law of nations;"⁷ and he distinguished it from the questions arising in the case of *Barclay v. Russell*⁸ as to property belonging to the colony of Maryland before the war of independence. The colony was, as Lord Eldon said, "only a corporation under the great seal dissolved by means

³10 Holdsworth, *History of English Law* (1938) 371-373.

⁴10 Holdsworth, *History of English Law* (1938) 372, note 7. See *infra*, pp. 150-152.

⁵10 Holdsworth, *History of English Law* (1938) 399.

⁶(1805) 11 Ves. 283.

⁷(1805) 11 Ves. 283, 294; he did not decide the point as the question at issue in the case was one of pleading only.

⁸(1797) 3 Ves. 424; for a good account of this case and the case of *Dolder v. Huntingfield*, see Moore, *Act of State in English Law* 157-161

which a court of justice was obliged to consider rebellious;"⁹ and therefore the questions in that case fell to be decided by the rules of English law. In 1817, in the case of *Wolff v. Oxholm*,¹⁰ Lord Ellenborough made an elaborate examination of the rules of international law as to the right to confiscate enemy property, in order to come to a decision as to the validity of a Danish ordinance confiscating the property and debts due to British subjects—thus in effect recognising that the rules of international law should be given effect to by the Law of England. In 1823, in the case of *Novello v. Toogood*,¹¹ which turned on the immunity of the house of an ambassador's servant, Abbott C. J. said that the Act of Anne "must be construed according to the common law, of which the law of nations must be deemed a part."¹² In the same year the law officers of the Crown¹³ gave it as their opinion that "subscriptions in favour of one of two belligerent states, being inconsistent with the neutrality declared by the government of the country and with the law of nations would be illegal, and subject the parties concerned in them to prosecution for a misdemeanor."¹⁴ In the following year, in the case of *De Wutz v. Hendricks*,¹⁵ Best C. J. held that this was the law. He said:

"... it occurred to me at the trial that it was contrary to the law of nations (which in all cases of international law is adopted into the municipal code of every civilized country) for persons in England to enter into engagements to raise money to support the subjects of a government in amity with our own, in hostilities against their government, and that no right of action would arise out of such a transaction."¹⁶

In 1861, in the case of *The Emperor of Austria v. Day*,¹⁷ the principle was recognised and restated. In 1853 Lord Lyndhurst said, "the offense of endeavouring to excite revolt against a neighbouring state is an offense against the law of nations. No writer on the law of nations states otherwise. But the law of nations, according to the decision of our greatest judges, is part of the

⁹(1805) 11 Ves. 283, 294.

¹⁰(1817) 6 M. & S. 92, 100-106.

¹¹(1823) 1 B. & C. 554, 2 Dow & Ry. K. B. 833, 1 L. J. (O.S.) K. B. 181.

¹²(1823) 1 B. & C. 554, 562, 2 Dow & Ry. K. B. 833, 1 L. J. (O.S.) K. B. 181.

¹³R. Gifford A. G., and J. S. Copley S. G.

¹⁴(1823) 2 State Tr. (N.S.) 1016.

¹⁵(1824) 2 Bing. 314, 9 Moore, C. P. 586, 2 State Tr. (N.S.) 125.

¹⁶(1824) 2 Bing. 314, 315-6, 9 Moore, C. P. 586, 2 State Tr. (N.S.) 125.

¹⁷(1861) 3 De G. F. and J. 217, 244, 30 L. J. Ch. (N.S.) 690, 4 L. T. 494, 7 Jur. (N.S.) 639, 9 W. R. 712, per Lord Campbell L. C., cited below p. 148, note 38.

law of England;" and this statement was concurred in by Lords Brougham, Truro, and Cranworth.¹⁸ In 1861 Stuart, V. C. held that, because international law was part of the law of England, the Court of Chancery could, by means of an injunction, protect the public rights of foreign sovereigns.¹⁹ In 1876 Sir R. Phillimore, Mr. Mountague Bernard, and Sir Henry Maine were of opinion that English courts were justified in applying modern rules of international law; that these modern rules condemned slavery; and that therefore the captain of a British ship of war, in the port of a state which allowed slavery, was justified in refusing to give up a slave who had taken refuge on his vessel.²⁰

The whole question as to the relation of English to international law was elaborately argued before all the judges in the court of Crown Cases Reserved in the case of *Regina v. Keyn*²¹ in 1876. The accused, a German, was the captain of The Franconia. He negligently ran down The Strathclyde, and, as a result of the collision, a passenger on the latter vessel was killed. His act, according to English law, amounted to manslaughter. The question before the court was whether an English court had jurisdiction to try him. Since the collision occurred within the three mile limit, that question depended upon whether the English courts would recognise

¹⁸Lewis, Foreign Jurisdiction 66-7.

¹⁹"The regulation of the coin and currency of any State is a great prerogative right of the sovereign power. It is not a mere municipal right, or a mere question of municipal law, but a great public right recognized and protected by the law of nations. A public right recognized by the law of nations is a legal right, because the law of nations is part of the common law of England. . . . The friendly relations between civilized countries require for their safety the protection by municipal law of those existing sovereign rights recognized by the law of nations," *Emperor of Austria v. Day*, (1861) 30 L. J. Ch. (N.S.) 690, 700; we shall see, (below) pp. 148, 149, that this decision, so far as it rested on those grounds, was overruled by the court of appeal.

²⁰"International law, it is to be observed, is not stationary; it admits of progressive improvement, though the improvement is more difficult and slower than that of municipal law, and though the agencies by which change is effected are different. It varies with the progress of opinion and the growth of usage; and there is no subject on which so great a change of opinion has taken place as slavery and the slave trade. . . . The trade in Negro slaves, which was formerly competed for as a legitimate source of profit, has in a great number of treaties been assimilated to the crime of piracy. These considerations are sufficient to justify Great Britain in instructing her officers not to enforce slave laws, or permit them to be enforced, on board her ships of war in foreign territorial waters," Royal Commission on Fugitive Slaves xxv; on the whole of this subject see 2 Stephen, *History of the Criminal Law of England* (1883) 43-58; Stephen was one of the commissioners, and reprints his memorandum, contained in the Report, in his history.

²¹(1876) 2 Ex. Div. 63, 46 L. J. M. C. 17, 41 J. P. 517, 13 Cox C. C. 403; see also 2 Stephen, *History of the Criminal Law of England* (1883) 29-42.

the rule of international law that the sea within that limit was for all purposes part of the territory to which it was adjacent. A minority of the judges²² held that, since international law is part of the law of England, and since international law recognised this three mile limit, the court had jurisdiction. That the views of these judges were substantially in accordance with the views of Lord Mansfield and Blackstone, and with the later decisions and dicta which follow these views, can be seen from a comparison between the words used by Blackstone in his Commentaries, and by Lord Coleridge C. J. in this case. Blackstone says:²³

"The law of nations is a system of rules, deducible by natural reason, and established by universal consent among the civilized inhabitants of the world. . . . This general law is founded on this principle, that different nations ought in time of peace to do one another all the good they can; and, in time of war, as little harm as possible, without prejudice to their own real interests. And, as none of these states will allow a superiority in the other, therefore neither can dictate or prescribe the rules of this law to the rest; but such rules must necessarily result from those principles of natural justice, in which all the learned of every nation agree; or they depend upon mutual compacts or treaties between the respective communities; in the construction of which there is also no judge to resort to, but the law of nature and reason, being the only one in which all the contracting parties are equally conversant, and to which they are equally subject. In arbitrary states this law, wherever it contradicts or is not provided for by the municipal law of the country, is enforced by the royal power; but since in England no royal power can introduce a new law, or suspend the execution of the old, therefore the law of nations (wherever any question arises which is properly the object of its jurisdiction) is here adopted in its full extent by the common law, and is held to be a part of the law of the land."

Lord Coleridge, C. J., after saying that the dominion of a state over its territorial waters was "established as solidly as any proposition of international law can be," proceeded as follows:

"Law implies a law giver, and a tribunal capable of enforcing it and coercing its transgressors. But there is no common law-giver to sovereign states; and no tribunal has power to bind them by decrees or coerce them if they transgress. The law of nations is that collection of usages which civilized states have agreed to observe in their dealings with one another. What these usages are, whether a particular one has or has not been agreed to, must be matter of evidence. Treaties and acts of state are but evidence of the agreement of nations, and do not in this country at least

²²Lord Coleridge C. J., Brett and Amphlett J. J. A., Grove, Denman, and Lindley, J. J.

²³4 Bl. Comm. 66-67.

per se bind the tribunals. Neither, certainly, does a consensus of jurists; but it is evidence of the agreement of nations on international points; and on such points, when they arise, the English courts give effect, as part of English law, to such agreement."²⁴

But the judges who thus followed the Mansfield and Blackstone tradition on this matter were in a minority. Cockburn C.J., who delivered the leading judgment on the opposing side, and the majority of the judges,²⁵ held that only those parts of international law are part of English law which could be proved to have been received into English law. That reception might be effected by statute incorporating a rule of international law, or it might be proved by the assent of the nations who were bound by international law to the particular rule.

"This assent may be express as by treaty, or the acknowledged concurrence of governments, or may be implied from established usage—an instance of which is to be found in the fact that merchant vessels on the high seas are held to be subject only to the law of the nation under whose flag they sail, while in the ports of a foreign state they are subject to the local law as well as to that of their own country. In the absence of proof of assent derived from one or other of these sources, no unanimity on the part of theoretical writers would warrant the judicial application of the law on the sole authority of their views and statements."²⁶

In other words, it is not true to say that all the rules of international law, as and when they are evolved by the jurists, become part of English law; but only those parts which, by legislation, judicial decision, or established practice, have been received into English law. The mere fact that there was a unanimous consensus of jurists in favour of a particular rule did not (as the judges who took the opposite view held) make that rule a rule of international law, which must, without more, be enforced as part of the law of England. Since there was no evidence that all the states bound by international law had assented to the rule that a state has jurisdiction over its territorial waters,²⁷ this was not a rule which could be enforced as part of the law of England. The assent of the jurists may, indeed, make it reasonable for Parliament to legislate so as to give effect to their views. But "it is obviously one thing to say that the legislature of a nation

²⁴*Regina v. Keyn*, (1876) 2 Ex. Div. 63, 153-4, 46 L. J. M. C. 17, 41 J. P. 517, 13 Cox C. C. 403.

²⁵Cockburn C. J., Kelly C. B., Bramwell J. A., Lush and Field J. J., Sir R. Phillimore, and Pollock B.

²⁶*Regina v. Keyn*, (1876) 2 Ex. Div. 63, 202-3, 46 L. J. M. C. 17, 41 J. P. 517, 13 Cox C. C. 403.

²⁷*Regina v. Keyn*, (1876) 2 Ex. Div. 63, 203-7, 46 L. J. M. C. 17, 41 J. P. 517, 13 Cox C. C. 403.

may, from the common assent of other nations, have acquired the full right to legislate over a part of that which was before high sea, and as such common to all the world; another and a very different thing to say that the law of the local state becomes thereby at once, without anything more, applicable to foreigners within such part, or that, independently of legislation, the courts of the local state can *proprio vigore* so apply it."²⁸

As Stephen points out, we can see the same divergence of opinion as to the relation of international law to English law in the report of the Royal Commission on Fugitive Slaves.²⁹ Cockburn, C. J. differed from the opinion expressed by Phillimore, Bernard, Maine that the development of rules of international law *per se* modified the rules of English law,³⁰ and expressed the opinion that no such modification could take place without some evidence that these developed rules had been received into and become a part of English law.³¹ This view in effect amounts to saying that international law is not so much a part, as a source, of English law. In each case in which the question arises the court must consider whether the particular rule of international law has been received into, and so become a source of, English law.³²

The Territorial Waters Jurisdiction Act 1878 gave the courts the jurisdiction which the minority of judges in this case had held that they possessed;³³ and its declaratory form is some evidence that the Legislature considered that their views were correct. Nevertheless I think that the opinion of Cockburn, C. J., and the majority of the judges had come to be more in accord with the principles of modern English law than the opinion of the minority which represents the older view that international law is *per se* part of the law of England. The reasons for this change are mainly three—the manner in which these questions came before the courts, a growing perception of the differences in the char-

²⁸*Regina v. Keyn*, (1876) 2 Ex. Div. 63, 207, 46 L. J. M. C. 17, 41 J. P. 517, 13 Cox C. C. 403.

²⁹2 Stephen, *History of the Criminal Law of England* (1883) 44.

³⁰Above, p. 144.

³¹"The principles of international law laid down by Lord Stowell remain the same: so far as we know, no compact or understanding has been come to since between our own and other governments inconsistent with them; and with regard to exterritoriality as now contended for, I deny, in the first place, that there is any proof that it has in point of fact been generally acquiesced in; and I venture, with all due deference, to think that it would be no improvement on the law of nations if it had. And I must here, in passing, observe that no improvement in our own views on any principle of international law will justify us in forcing the law, as we view it, on another state, which does not take the same view that we do," Royal Commission on Fugitive Slaves xxxvi.

³²(1935) 51 L. Quart. Rev. 24, 31.

³³41-42 Vic. Ch. 73.

acter and ambit of the rules of international and the rules of municipal law, and the course of legislation. Let us look briefly at the matter from these three points of view.

In the first place, though many judges and jurists had laid it down in broad terms that international law is part of the law of England,³⁴ these broad statements were merely prefaces to the ruling in particular cases, which turned upon the application of a particular rule of international law to cases concerning the immunities of foreign sovereigns or ambassadors, questions as to the criminal liability of subjects for breaches of truces, or for raising subscriptions or doing other acts to help revolutions against friendly powers, or questions arising in civil actions in which the existence of some rule of international law was relevant to the issues in the case. Thus the attention of the judges was concentrated upon the question whether a particular rule, alleged to be a rule of international law, and as such part of the law of England, was in fact a rule of international law. They were obliged therefore to scrutinize the evidence as to whether that particular rule had been received as a rule of international law. The influence of this mental attitude is very obvious in the judgments of Cockburn, C. J., and the other judges who agreed with him. In the second place, the growing perception of the differences between the character and ambit of the rules of international and the rules of municipal law, led the courts to distinguish between rights and duties enforceable in a municipal court, and rights and duties which though not so enforceable, were yet recognised by international law. Thus in *Barclay v. Russell*, Lord Loughborough distinguished between political equities which might be made "the foundation of representations to be made from state to state," and judicial equities.³⁵ In *The Emperor of Austria v. Day*³⁶ Lord Campbell and Turner, L. J., denied the truth of the principle laid down by Stuart, V. C., in the court below, that since international law was part of the law of England, and since the Emperor of Austria's prerogative rights were recognised by international law, the Court of Chancery could interfere to protect those rights by injunction.³⁷ Turner, L. J., said:³⁸

³⁴10 Holdsworth, History of English Law (1938) 371-3; above, pp. 142-144.

³⁵(1797) 3 Ves. 424, 435.

³⁶(1861) 3 De G. F. and J. 217, 30 L. J. Ch. (N.S.) 690, 4 L. J. 494, 7 Jur. (N.S.) 639, 9 W. R. 712.

³⁷Above, p. 144 and note 19.

³⁸*Emperor of Austria v. Day*, (1861) 3 De G. F. and J. 217, 251-2, 30 L. J. Ch. (N. S.) 690, 4 L. J. 494, 7 Jur. (N.S.) 639, 9 W. R. 712; cf. the judgment of Lord Campbell, L. C., at pp. 231-2; it appears that counsel for

"The prerogative rights of sovereigns seem to me . . . to stand very much on the same footing as acts of state and matters of that description, with which the municipal courts of this country do not and cannot interfere. Such acts and matters are recognised by international law no less than the prerogative rights of sovereigns; but the municipal courts of this country have disclaimed all right to interfere with respect to them. If the subject of one state infringes the prerogative of the sovereign of another state, the remedy, as I apprehend, lies in an appeal by the offended sovereign to the sovereign of the state to which the offender belongs."

It is true that helping to plot revolution against the sovereign of a friendly state is a misdemeanour. To that extent English law recognises and enforces international obligations.³⁹ But English law stops short of giving a remedy in its courts to a foreign sovereign who complains of the infringement of his sovereign rights. In the third place, this attitude of mind was helped by the course of legislation in regard to topics which touch upon the rules of international law. In the Middle Ages, before international law had become a definite system, there had been legislation against breakers of truces and safe-conducts.⁴⁰ The statute of 1708,⁴¹ which dealt with the immunities of ambassadors, though said by Lord Mansfield and others to be only declaratory of the common law,⁴² really introduced this principle of international law into the common law, and for the first time provided penalties for its breach.⁴³ Later, the statutes dealing with such subjects as foreign enlistment and extradition made certain topics connected with international law part of English law. In these circumstances it is possible to understand Cockburn, C. J.'s refusal to supply by judicial action "the absence of actual legislation."⁴⁴

the plaintiff admitted in the court of appeal that they could not base their claim for an injunction on an invasion of the Emperor's prerogatives.

³⁹Above, p. 143; "fitting out a warlike expedition in England to bring about a revolution in the dominions of a sovereign in alliance with Queen Victoria would certainly amount to a misdemeanor . . . and the manufacture of twenty tons of promissory notes for the same purpose may amount to the same offence," *Emperor of Austria v. Day*, (1861) 3 De G. F. and J. 217, 244, 30 L. J. Ch. (N.S.) 690, 4 L. J. 494, 7 Jur. (N.S.) 639, 9 W. R. 712.

⁴⁰2 Holdsworth, *History of English Law* (1938) 473-474; 4 Bl. Comm. 68-70.

⁴¹7 Anne, ch. 12; 10 Holdsworth, *History of English Law* (1938) 370-371.

⁴²10 Holdsworth, *History of English Law* (1938) 372.

⁴³10 Holdsworth, *History of English Law* (1938) 369-371.

⁴⁴"The question is whether, acting judicially, we can treat the power of Parliament to legislate as making up for the absence of actual legislation. I am clearly of opinion that we cannot," *Regina v. Keyn*, (1877) 2 Ex. Div. 63, 208, 46 L. J. M. C. 17, 41 J. P. 517, 13 Cox C. C. 403; with this view Stephen agrees, 2 *History of Criminal Law of England* (1883) 41-42.

The view taken by Cockburn C. J. and the majority of the court in *Regina v. Keyn* is the view which has prevailed. This is clear from the case of *West Rand Central Gold Mining Co. v. Rex*.⁴⁵ Lord Alverstone C. J. delivering the judgment of the court said:⁴⁶

"The proposition . . . that international law forms part of the law of England. requires a word of explanation and comment. It is quite true that whatever has received the common consent of civilized nations must have received the assent of our country, and that to which we have assented along with other nations in general may properly be called international law, and as such will be acknowledged and applied by our municipal tribunals when legitimate occasion arises for those tribunals to decide questions to which doctrines of international law may be relevant. But any doctrine so invoked must be one really accepted as binding between nations, and the international law sought to be applied must, like anything else, be proved by satisfactory evidence, which must show either that the particular proposition put forward has been recognised and acted upon by our own country, or that it is of such a nature, and has been so widely and generally accepted, that it can hardly be supposed that any civilized state would repudiate it. The mere opinions of jurists, however eminent or learned, that it ought to be so recognised, are not in themselves sufficient."

Moreover there is another condition which must be satisfied before a rule of international law can be accepted by the courts as a part of English law—a condition which also applies to all exercises of any of the prerogatives of the crown. That is the condition that the rule of international law must not conflict with a rule of English law. If it conflicts with a rule of English law no effect can be given to it. In *Regina v. Keyn*⁴⁷ Cockburn, C. J., held, in effect, that, by the rules of English law, the English courts had no jurisdiction over the offences of foreigners (not being part of the crew of a British ship) committed by them on the high seas; that English law had never recognised that the English state had a general dominion over territorial waters; that, except for special purposes defined by statute, it held such territorial waters to be part of the high seas; and that therefore to assert a criminal jurisdiction over a foreigner in the case before the court would amount to changing the law of England. Even if all

⁴⁵[1905] 2 K. B. 391, 74 L. J. K. B. 753, 93 L. T. 207, 53 W. R. 660, 21 T. L. R. 562, 49 Sol. Jo. 552.

⁴⁶[1905] 2 K. B. 391, 406-407, 74 L. J. K. B. 753, 93 L. T. 207, 53 W. R. 660, 21 T. L. R. 562, 49 Sol. Jo. 552.

⁴⁷(1877) 2 Ex. Div. 63, 46 L. J. M. C. 17, 41 J. P. 517, 13 Cox C. C. 403.

other nations could be proved to have assented to this jurisdiction, such assent would not

"be sufficient to authorize the tribunals of this country to apply, without an Act of Parliament, what would practically amount to a new law. . . . The assent of nations is doubtless sufficient to give the power of parliamentary legislation in a matter otherwise within the sphere of international law; but it would be powerless to confer without such legislation a jurisdiction beyond and unknown to the law, such as that now insisted on, a jurisdiction over foreigners in foreign ships on a portion of the high seas."⁴⁸

It may perhaps be thought that the limitations and conditions placed by English law on the recognition of the rules of international law, which flow from the view that international law is not a part, but a source, of English law, are unduly restrictive. In particular cases this may be so. Thus the law, as it existed before the Foreign Enlistment Act, 1870, was inadequate to prevent breaches of neutrality; and the result was that this country was involved in heavy liabilities for the damage caused by these breaches. But generally this state of the law has not been found to be inconvenient. There are two reasons for this. In the first place, the Legislature has always been willing to intervene to bring English law into harmony with the latest developments of international law. In the second place some of the results of the meaning given to acts of state in English law enable the Crown, by virtue of its wide prerogative over foreign affairs, to give effect to the rules of international law provided that they do not conflict with the rules of English law. For instance the Crown can recognise the status of a foreign sovereign or a foreign public ship, and thereby confer the immunity which is given by the rules of international law.

Lastly it should be noted that these doctrines as to the relation of English law to international law are the doctrines which are applied by the ordinary courts of law and equity. The position of the Prize Court, which administers international law,⁴⁹ is different. It is bound by a statute; so that, if a statute compels a departure from the rules of international law, the court must decide in accordance with the statute.⁵⁰ But, if the decision in the case of *The Zamora*⁵¹ is correct, it is not bound by an Order

⁴⁸(1877) 2 Ex. Div. 63, 203, 46 L. J. M. C. 17, 41 J. P. 517, 13 Cox C. C. 403.

⁴⁹Holdsworth, *History of English Law*, vol. 1, pp. 565, 566; vol. 12, pp. 653, 654, 670, 693.

⁵⁰1 Holdsworth, *History of English Law* (1938) 566.

⁵¹[1916] 2 A. C. 77, 85 L. J. P. 89, 114 L. T. 626, 32 T. L. R. 436, 60 Sol. Jo. 416, 13 Asp. M. L. C. 330.

in Council which purports to alter a rule of international law, whether or not it is a rule of international law which has been accepted by the common law,⁵²—a proposition which I have given reasons for thinking is as doubtful in law as it is politically inexpedient.⁵³

⁵²[1916] 2 A. C. 77, 90-94, 85 L. J. P. 89, 114 L. T. 626, 32 T. L. R. 436, 60 Sol. Jo. 416, 13 Asp. M. L. C. 330.

⁵³1 Holdsworth, *History of English Law* (1938) 567.